Court No.2

Writ Petition No. 75 of 2002 (M/S)

Bhuwan Chandra Shah …… Petitioner

Vs.

U.P. State Electricity Board/
U.P. Power Corporation and
One another ……. Respondents

…….

Second Appeal No. 45 of 2001

U.P. State Electricity Board/
U.P. Power Corporation and
One another ……. Appellants

Vs.

Bhuwan Chandra Shah …… Respondent

……..

Hon. P.C. Verma, A.C.J.

The aforementioned writ petition and appeal are interconnected and involve common question of law and facts and, therefore, they are being taken up together and disposed of by a common judgment.

The writ petition has been filed by the petitioner challenging the order dated 1.12.2001 passed by the revisional Court (District Judge, Nainital) in Civil Revision No. 12 of 2001. The civil revision was filed against the order of execution passed by the executing Court, executing the decree dated 2.5.1997. The learned District Judge held that the decree is not executable.

In order to appreciate the finding of the learned District Judge, it is appropriate to consider the decree at this juncture. The decree which was being executed is reproduced as under:

> ''वादी का वाद विवादित भूमि पर कब्जा पाने के लिए और 60/–रू0 किराये की राशि पाने के लिए प्रतिवादी के विरूद्ध मय खर्चा डिक्री किया जाता है। प्रतिवादी को आदेश दिया जाता है कि वह तीन माह अन्दर विवादित भूमि खाली करके उस पर वादी का कब्जा करा दे, अन्यथा वादी को न्यायालय के माध्यम से कब्जा पाने का अधिकार होगा। वाद दायर होने की तिथि से कब्जा पाने की तिथि तक वादी 20/–रू0 वार्षिक बतौर डेमेजेज प्रतिवादी से पाने का अधिकारी है। प्रतिवादी का काउन्टर क्लेम मय खर्चा खारिज किया जाता है।''

From the perusal of the decree, it is clear that the decree was passed against the defendant for handing over possession of the disputed land to the plaintiff and for payment of rent @ Rs. 60/- from

the defendant. The defendant was also ordered to vacate the disputed land and handover the possession to the plaintiff failing which the plaintiff was to take possession through the Court. The plaintiff was also allowed damages @ 20/- per year from the date of filing of the suit till the date of handing over possession to him. The counter claim of the defendant was also rejected. As such, the decree can be executed by disposing the respondent. Therefore, the finding recorded by the learned District Judge holding that the decree is not executable can not be sustained in the eye of law. The order dated 1.12.2001 passed by the District Judge, Nainital is hereby set aside and the executing Court is directed to proceed in accordance with law.

However, six months time is granted to the respondents to shift their sub-station to any other place or the State Government may proceed for acquisition of the land in question for the purposes of Uttaranchal Power Corporation.

The writ petition and the appeal are disposed of accordingly.

(P.C. Verma, A.C.J.)

Dt. 19.06.2003

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